

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CAROL CHESEMORE, DANIEL
DONKEL, THOMAS GIECK, MARTIN
ROBBINS, and NANETTE STOFLET, on
behalf of themselves, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

ORDER

09-cv-413-wmc

ALLIANCE HOLDINGS, INC., DAVID B.
FENKELL, PAMELA KLUTE, JAMES
MASTRANGELO, STEPHEN W. PAGELOW,
JEFFREY A. SEEFELDT, TRACHTE
BUILDING SYSTEMS, INC. EMPLOYEE
STOCK OPTION PLAN, ALLIANCE HOLDINGS,
INC. EMPLOYEE STOCK OPTION PLAN,
A.H.I., INC., ALPHA INVESTMENT
CONSULTING GROUP, LLC, JOHN MICHAEL
MAIER, AH TRANSITION CORPORATION, and
KAREN FENKELL,

Defendants;

PAMELA KLUTE, JAMES MASTRANGELO,
and JEFFREY A. SEEFELDT,

Cross Claimants,

v.

ALLIANCE HOLDINGS, INC., and STEPHEN W.
PAGELOW,

Cross Defendants.

On July 24, 2014, the court held a fairness hearing on a proposed class action settlement at which all parties appeared by counsel. The court previously granted preliminary approval of six settlements based on executed "term sheets" which set forth

the essential elements of the settlements, and approved a class notice based on those terms. (2/18/14 Order (dkt. #889); 4/9/14 Order (dkt. #913); Notice (dkt. #910-2).) Three groups of defendants have now filed executed, final settlement agreements. Unfortunately, plaintiffs have not been able to reduce their agreements to final settlement agreements with respect to defendants David and Karen Fenkell, and as a consequence, with respect to the Trachte Building Systems, Inc. and the Trachte ESOP defendant, because that settlement depends on the finalization of one of the Fenkell settlement agreements.

This order simply addresses the Alliance defendants' motion for appointment of an independent fiduciary (dkt. #939), and confirms deadlines for additional filings and a telephonic hearing established at the hearing held today. As for next steps, the court anticipates granting final approval of the settlements (hopefully, including those with the Fenkells and the Trachte defendants) the week of August 4, 2014, or shortly thereafter.¹ That order will also address plaintiffs' motions for (1) payment of incentive awards (dkt. #921); (2) attorneys' fees and costs as part of the settlement (dkt. #928); and (3) attorneys' fees and costs pursuant to ERISA § 502(g)(1) against defendant David Fenkell (dkt. #934). Accordingly,

¹ The court sees no basis, as the Alliance defendants urge, for delaying final approval until the independent fiduciary completes its valuation of the stock and PTE determinations. In the anticipated order approving the settlement, however, the court will retain jurisdiction over enforcement of the settlement, including over any objections by the independent fiduciary based on the PTE determinations.

ORDER

IT IS ORDERED that:

- 1) The Alliance defendants' motion for appointment of an independent fiduciary (dkt. #939) is GRANTED. The court appoints Evercore Trust to make the determination of fair market value of Alliance and AH Transition Corporation stock in accordance with DOL Proposed Regulation § 2510.3-.19 and to make certain determinations required by Prohibited Transaction Exemption (PTE) 2003-39, as described in 75 Fed. Reg. 33830 (June 15, 2010). Evercore Trust should complete its valuation and submit a report to Alliance on or before September 30, 2014.
- 2) On or before August 1, 2014, plaintiffs shall submit a letter to the court, providing an update on the status of the settlements with the Fenkells, and in particular addressing the concerns about confirmatory discovery. If final written settlements have not been submitted for the Fenkell settlements, the court will hold a telephonic hearing on August 4, 2014, at 6:00 p.m. to address the status of those settlements. Plaintiffs to initiate the call to chambers at 608-264-5087.
- 3) The Alliance defendants may have until July 29, 2014, to respond to the issues raised in David Fenkell's opposition to plaintiffs' motion for attorneys' fees against him pursuant to ERISA § 502(g)(1) (dkt. #938). Any reply by Fenkell is due on or before August 1, 2014.

Entered this 24th day of July, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge